*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION NO.6784 OF 2000

%12.10.2004

S. Ravishankar

..PETITIONER

Vs.

$ The Registrar, Sri Venkateswara University

Tirupati, Chittoor District, and two others

..RESPONDENTS

!COUNSEL FOR PETITIONER: Mr. S. Satyanarayana

^ COUNSEL FOR RESPONDENTS 1 & 2: Mr.B. Adinarayana Rao

COUNSEL FOR RESPONDENT NO.3: ..

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>HEAD NOTE:

?CASES REFERRED:

1. 2000 (3) ALD 715 (DB)
2. 2004 AIRSCW 3888 = (2004) 4 SCC 714

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELVTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 6784 of 2000

Between:

S.Ravishankar, S/o.Siva Prasad

Ashoknagar, Chinna Chowk P.O.,

Cuddapah

..... PETITIONER

AND

1. The Registrar, Sri Venkateswara University,

Tirupati, Chittoor District.

2. The Controller of Examinations

Sri Venkateswara University, Tirupati

Chittoor District.

3. The Principal, S.R.S.Janardhan Degree College

Siddavattam, Cuddapah District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any appropriate Writ, order or direction more particularly in the nature of Writ of Certiorari and call for the records on the file of the respondents in Proceedings No.B.V.(3)/SMP/Appl.98 (5-6), dated 28.9.1998, and also in Memo No.B-V. (3)/SMP/Apl.98, dated 4.2.2000 and quash the same.

Counsel for the Petitioner: MR.S.SATYANARAYANA RAO

Counsel for the Respondent Nos.1 and 2: MR.B. ADINARAYANA RAO

Counsel for the Respondent No.3: ..

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.6784 OF 2000

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ORDER:

The petitioner assails the proceedings of the second respondent dated 28.9.1998 as well as 04.2.2000 and seeks Writ of Certiorari to quash the impugned proceedings.

The petitioner is a student of B.A. Degree course in third respondent college. He joined the course in 1995 and in April, 1998 appeared for III year B.A. final examinations with Registration No.96162035. The first respondent University did not declare the result of the petitioner. The first respondent issued a show cause notice dated 18.7.1998 calling upon the petitioner to submit explanation within 10 days as to why action should not be taken against him for indulging in malpractice. It is alleged that Paper-III (History), was found tampered with main answer book and that there is variation in the hand writing in pages 1 and 2 compared to other pages of answer book and that the pinning of the answer book was not properly done, and that the Examiner suspected that some written material was inserted in the main answer book. The petitioner submitted explanation on 20.7.1998 denying the allegations of malpractice as alleged in the show cause notice. The University called for a report from the Principal of the third respondent college in that regard. In the report dated 27.7.1998, the Principal informed that no malpractice took place in the examination center and that the petitioner and another student did not indulge in any malpractice. Nonetheless by proceedings of the Vice chancellor dated 28.9.1998 as communicated by the second respondent, he was informed that all the examinations appeared by the petitioner are cancelled and that he is debarred from appearing for subsequent examinations to be conducted by the University in September/October 1998, April 1999, September 1999, and April 2000. He was only permitted to appear the examinations from September/October 2000.

Assailing the proceedings of the Vice chancellor dated 28.9.1998, the petitioner filed a writ petition being W.P.No.32613 of 1998. This Court having regard to the fact that the petitioner had not availed the remedy of statutory appeal before the appropriate authority, disposed of the writ petition by order dated 4.11.1999, giving liberty to the petitioner to file appeal and the concerned authorities were directed to dispose of the appeal within two months from the date of presentation of appeal. The petitioner, thereafter, submitted an appeal on 7.12.1999. The same was considered by Malpractice Enquiry Committee (MEC) on 4.2.2000 and decided to confirm the

punishment already given by the University in its Proceedings dated 28.9.1998. The said decision was informed to the petitioner by Memo dated 4.2.2000.

The Registrar of the University has filed a counter affidavit on behalf of respondents 1 and 2. The averments in the counter may be noticed. The result of the petitioner was withheld basing on the report received from Smt. K. Annapoorna, Additional Examiner in History examination. In her report, she alleged that the answer script of the petitioner in Paper III (History) was tampered and the papers were annexed to the main answer book and that the hand writing is different. As per the Examiner, the petitioner inserted some written material. There is no procedure to send a copy of such reports to the candidate. But the contents of the reports were intimated to the candidate through a memo and after receiving explanation of the petitioner, the same was placed before the MEC, which after going through the explanation of the petitioner, recommended appropriate action. As per the directions of the High Court, enquiry was conducted by MEC on 4.2.2000 in the chambers of the Director, and after comparing the hand writing in the answer book resolved to confirm the punishment which was informed by memo dated 4.2.2000.

Learned counsel for the petitioner, Sri S.Satyanarayana, representing Sri A.Suryanarayana Murthy, contends that as per the report submitted by the Principal of the College the petitioner has not resorted to any malpractice as alleged in the show cause notice. The handwriting in the answer script in all pages if that of the petitioner and the allegation that petitioner tampered the answer script and inserted written material is without any basis. He submits that the petitioner appeared for III year History paper examination in April 1998, that when the petitioner completed the written examination and handed over the answer script, the same was checked by the Invigilator, before petitioner left examination hall, that at no point of time any such allegation was made against petitioner and that as an afterthought the case of malpractice is foisted against petitioner. He further submits that this Court while disposing of the Writ Petition No.32613 of 1998, gave liberty to petitioner to file appeal to appropriate authority. The petitioner submitted such appeal, but the same was considered by the MEC itself. Such a course of action adopted by the University is violative of principles of natural justice. Learned counsel for Sri Venkateswara Univesity, Sri B.Adinarayana Rao contends that the MEC has thoroughly verified the answer script of the petitioner and on perusing the handwriting came to the conclusion that the petitioner has resorted to malpractice. The said finding does not warrant any interference by this Court and that it is not permissible for this Court to interfere with the finding of the MEC. He submits that petitioner was given adequate opportunity to represent his case and principles of fairness were followed before cancelling the examination of the petitioner. He, however, does not dispute that after the decision of the MEC, initially Vice-Chancellor took a decision which was communicated by second respondent to petitioner by proceedings dt.28.9.1998 and that against the decision of the Vice-Chancellor, an appeal would lie to Board of Management.

This Court heard the matter on 28.9.2004 and directed the learned Standing Counsel to produce record and relevant answer script. The record was produced before this Court on 30.9.2004 and the matter was again heard. The Xerox copies of

certain documents, including the answer script of the petitioner, are made part of the record. The record produced before this Court, including the answer script, would show that no malpractice was alleged against petitioner on the date of examination or thereafter. It appears, after the conclusion of the examinations answer scripts were sent to History Board for evaluation. The paper of the petitioner was valued and the examiner awarded 45 marks. But some time after evaluation, the Chief Examiner sent a report dt.5.5.1998 to second respondent informing that the answer script of the petitioner and another student are tampered with main answer book and handwriting is different; that the papers which are attached to the main answer book are different and that punching is also missing. The said report reads as under:

This is to your kind information that while correcting the Modern European History Papers (Paper III Code 57) we found that the paper bearing the Numbers 3567 and 3574 are tampered with the main answer book. The handwriting is different. The papers which are attached to the main answer book is different and the punching is also missing. We request you to kindly look into the matter and take necessary steps.

As can be seen from the above letter, the allegations are (i) the answer script is tampered with main answer book; (ii) the handwriting is different; (iii) the papers which are attached to main answer book are different; and (iv) punching is also missing. Based on the above report of the Chief Examiner of History Board dt.5.5.1998 in a routine manner second respondent issued show cause notice dt.8.7.1998 calling upon petitioner to submit explanation through the Principal of the College at which he appeared for the examination, on or before 18.7.1998. When the Chief Examiner, History Board sent report on 5.5.1998, no explanation is forthcoming as to why second respondent issued show cause notice two months thereafter. Be that as it is, in the show cause notice it is alleged as under:

It is noticed by the Examiner that the Answerscript with Reg.No.96162035 is tampered with the Main answer book. The handwriting in 1, 2 pages are different to that of other pages. It is also found that the pinning is also not in a proper condition. It is suspected that some papers with written material are inserted to the Main answer book. Hence, it is a case of insertion.

The said show cause notice is purportedly issued based on the report of the Chief Superintendent whereas the Chief Superintendent of the Examination Centre, i.e., Principal of third respondent College never gave any complaint. The gravamen of the charge on an analysis would show that (i) as noticed by the Examiner the answer script is tampered with main answer book; (ii) handwriting in 1, 2 pages is different to that of other pages; (iii) it is also found that pinning is also not in proper condition and (iv) it is suspected that some papers with written material are inserted to the main answer book and hence it is a case of insertion. The Chief Examiner made different allegations. Further, in the report of the Chief Examiner of History Board, the III Year History Paper with code No.3574 was later inserted. The report is also in relation to III Year History paper with code No.3567 belonging to another candidate by name Sri B.Ganga Raju. The said answer script was also produced before this Court and the same would *ex facie* support the allegations made by Chief

Examiner. On a careful perusal of the answer script of the petitioner with Code No.3574 (corresponding to petitioner's Hall Ticket No.96162035), it is very difficult to accept the allegations of the University made against petitioner. The handwriting in all the papers is same and the allegations of wrong pinning, tampering and inserting written material are not borne out by the record itself. The Invigilator did not report any such malpractice and the Principal of third respondent College in the report dt.27.7.1998 categorically stated that petitioner did not resort to malpractice of inserting material by tampering with main answer book as alleged. Even at the time of evaluation by the Examiner of III Year History Board, no such allegation was made. It is only at the stage of scrutiny by the Chief Examiner such allegation is made. A perusal of the answer script produced before this Court would belie the same. This Court is of opinion that the entire action taken by second respondent as well as MEC is without proper scrutiny in a routine manner probably for the reason that the petitioner's case was tagged on to the case of Sri B.Ganga Raju which is *ex facie* a case of insertion of outside material.

Learned counsel for the respondent University submits that though the handwriting in the answer script is same, there is variation in the handwriting from page to page and that petitioner unnecessarily answered wrong questions. This submission is of no relevance for two reasons. First, the Valuer had already valued answer scripts and awarded 45 marks to petitioner and secondly except stating that the petitioner is suspected of smuggling written material into examination hall, in the show cause notice or in the impugned orders, no definite finding is recorded either by MEC or by Controller of Examinations or Vice Chancellor that the petitioner has brought written material from outside and tampered with the answer script by inserting such material. The counter is silent on this. On such mere suspicion, the career of a student cannot be put in jeopardy as the allegation of resorting to malpractice would costs indelible stigma on future life of the student.

Admittedly, the petitioner was punished for alleged malpractice as per the revised norms of punishment approved by the Resolution dt.15.7.1997 passed by the Syndicate of the University. The petitioner was admittedly dealt with for the violation, namely, "inserting unauthorized answer book/additional books". In the report of the Chief Examiner dt.5.5.1998 or the show cause notice dt.8.7.1998 or the proceeding of the Vice-Chancellor dt.28.9.1998 or the Memo dt.4.2.2000, there was no allegation nor finding is recorded that the petitioner has inserted unauthorized answer book/additional books. Only on suspicion the punishment was imposed on the petitioner which cannot be sustained.

Learned counsel for the respondents also contends that when a body constituted under relevant Statutes has already examined the matter twice, it would not be proper for this Court to re-examine the issue with reference to the facts. I am afraid, I cannot agree with the submission. In proceedings for Certiorari, it is always open to this Court to examine the jurisdictional facts. The University and MEC would get jurisdiction only when there is a proven case of malpractice by student. On mere suspicion, if petitioner is prohibited from appearing in University examinations, the same would amount to exercising jurisdiction in a wrong manner. Such exercise gets vitiated by jurisdictional error. Therefore, it is permissible for this Court to

examine the facts and re-appreciate the evidence to a limited extent as otherwise, it would not be possible whether the authority vested with the jurisdiction has properly understood the facts and exercised the jurisdiction.

A Division Bench of this Court in **Pennar Delta Ayacutdars Association v Government of A.P.** and the Supreme Court in a recent decision in **State of U.P. v. Johri Mal**, considered this aspect. The Division Bench of this Court in **Pennar Delta Ayacutdars Association case** (supra), after referring to the limitations on the exercise of power of judicial review, while holding that ordinarily re-appreciation of facts based on evidence is not permissible, held as under:

> It is well settled that while exercising the power of judicial review under Article 226 of the Constitution, we are more concerned with the decision making process than the decision itself. In doing so, it is often argued by the defender of the impugned decision that this Court is not competent to exercise its power when there are serious disputed questions of facts, when the decision of the Tribunal or the fact finding body or the Arbitrator is given finality by statute which governs a given situation or which by nature of the activity, the decision makers opinion on facts is final. But while examining and scrutinizing the decision making process, it becomes inevitable also to appreciate the facts of a given case as otherwise, in our considered opinion the decision cannot be tested under the grounds of illegality, irrationality or impropriety. How far the **Court of judicial review can re-appreciate the findings of fact depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well neigh impossible for this Court to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to the *prima facie* conclusion or plausible conclusion and then testing the decision of the authority on the touchstone of the tests laid down by the Court with special reference to a given case. This position is well settled in Indian Administrative Law.**
>
> (emphasis supplied)

In **Johri Mal case** (supra), it was held:

> It is well settled that while exercising the power of judicial review, the Court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the Court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact finding body or the Arbitrator is given finality by the statute which governs a given situation or which by nature of the activity, the decision makers opinion on facts is final. But while examining and scrutinizing the decision making process, it becomes inevitable to also appreciate the facts of a given case as otherwise, the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the Court of judicial review can re-appreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touchstone of the tests laid down by the Court with special reference to a given case. This position is well settled in Indian Administrative Law. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker.

The second question is whether it is proper for MEC again to deal with appeal/letter dt.7.12.1999 of the petitioner made to the University pursuant to orders of this Court in W.P.No.32613 of 1998. The answer must be definitely in the negative. The order dt.4.11.1999 passed by this Court in W.P.No.32613 of 1998 reads as under:

> The Writ Petitioner assails the proceedings of the Vice-Chancellor, Sri Venkateswara University, Tirupathi, in B.V.(3)/SMP/April, 1998 (5-6) dt.28.9.1998 as arbitrary, illegal, and violative of the fundamental rights of the petitioner.
>
> Under the impugned orders for the alleged malpractices of the petitioner his result have been withheld and he has been debarred for a period of three years from appearing in any subsequent University Examinations. As against that order the statute provides an appeal to the appropriate authority. The petitioner has not resorted to the remedy of appeal, and instead he filed the present writ petition challenging the impugned proceedings. **Let the petitioner exhaust the remedies available in the statute in the first instance before invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution.**
>
> **In view of the above observation the Writ Petition is disposed of. Upon the appeal filed by the petitioner, the authorities concerned may dispose of the appeal within a period of two months from the date of presentation.** No costs.
>
> (emphasis supplied)

It does not require much legal acumen for anyone to come to a conclusion that this Court gave liberty to petitioner to avail statutory

remedy of appeal before appropriate authority. Section 41 of A.P. Universities Act, 1991 (for short, the Universities Act) deals with the procedure of appeal in disciplinary cases against students whereas Section 42 gives right of appeal of students and employees of the University. These provisions read as under:

> **41. Procedure of appeal in disciplinary cases against students:-** Any student or candidate for an examination whose name has been removed from the rolls of the University by the order or resolution of the Vice-Chancellor, or by a Committee constituted by the Board of Management as the case may be, and who has been debarred from appearing at the examinations of the University for more than one year, may, within ten days of the date of communication of such orders or copy of such resolution to him, appeal to the Board of Management and the Board of Management may confirm, modify or reverse the decision of the Vice-Chancellor or the Committee as the case may be.
>
> **42. Right of Appeal: -** Every employee or student of the University shall, notwithstanding anything contained in this Act, have a right to appeal within such time as may be prescribed by the Statutes to the Board of Management against the decision of any officer of the University affecting such employee or student and thereupon the Board of Management may confirm, modify or reverse the decision appealed against.

Under both the provisions, appeal would lie to the Board of Management against the decision of the Vice-Chancellor. In this case, the decision of the Vice-Chancellor vide proceedings dt.28.9.1998 was already communicated and it is against said

decision of the Vice-Chancellor petitioner submitted appeal/representation on 7.12.1999. Curiously, instead of placing the said appeal before the Board of Management as per Section 41 or as per Section 42, second respondent issued show cause dt.31.1.2000 to petitioner directing him to appear before MEC on 4.2.2000. On 4.2.2000 the petitioner appeared before the MEC which has considered the representation of the petitioner and again decided to confirm the punishment. Initially, MEC examined the matter and took a decision to impose punishment of cancellation of examination in History Paper-III and also debarring the petitioner till September/October 2000 examinations. This Court is not able to comprehend as to how MEC can sit in appeal over its own decision. If the matter had already been placed before Board of Management, and a decision was taken by the said authority to remand the matter to MEC, it would have been a different thing. But, there is no material in the file placed before this Court to such effect. Therefore, the consideration of the appeal petition dt.7.12.1999 made by petitioner is contrary to orders of this Court in Writ Petition No.32613 of 1998 and is *ex facie* illegal and violative of principles of natural justice.

It is brought to my notice that the petitioner did not appear for the examinations subsequently though his punishment period came to an end by September/October 2000. If the evaluation made by the History Board in March, 1998 is allowed to stand, petitioner will have to be declared as passed his B.A. final examination. Be that as it is, this Court is of considered opinion that as the University has not followed the orders of this Court in W.P.No.32613 of 1998 in letter and spirit and under misconception matter was considered again by MEC, it is just and proper to direct the Registrar of Sri Venkateswara University to place the appeal petition of the petitioner before the Board of Management, which shall take appropriate decision. Needless to mention that the answer script of the petitioner in III Year B.A History, the necessary material, as well as the judgments of this Court, shall also be placed before the Board of Management. The Board of Management should also consider that on a mere suspicion second respondent initiated action against petitioner without proper application of mind that is required in a matter of this nature.

For the above reasons, the Writ Petition is allowed with costs. The impugned Memo No.B-V(3)/SMP/Apl. '98, dt.4.2.2000 is quashed and the matter shall stand remitted to Board of Management of Sri Venkateswara University for consideration of appeal of the petitioner afresh in the light of the observations of this Court. This exercise may be completed within a period of two months from the date of receipt of this order.

(V.V.S.RAO, J)

12.10.2004

bnr

Note: LR copy be marked.

(by order)

bnr

The Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Tuesday, the twelfth day of October, Two Thousand and Four

ASSISTANT REGISTRAR

To

(One fair copy to the Hon'ble Mr.Justice V.V.S.RAO (for his Lordships kind perusal)

1. The Registrar, Sri Venkateswara University,

Tirupati, Chittoor District.

2. The Controller of Examinations

Sri Venkateswara University, Tirupati

Chittoor District.

3. The Principal, S.R.S.Janardhan Degree College

Siddavattam, Cuddapah District.

4 The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

5 The Secretary, A.P.Advocates Association Library, High Court

Buildings, Hyderabad.

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